

PP

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v.

HANAFI MAT HASSAN

HIGH COURT MALAYA, SHAH ALAM

b

MOHD HISHAMUDIN YUNUS J

[CRIMINAL TRIAL NO: 45-8-2000]

13 MAY 2003

CRIMINAL LAW: Penal Code - Sections 302 & 376 - Murder & Rape - Overwhelming circumstantial evidence - Whether evidence pointed to guilt of accused beyond reasonable doubt - Whether prima facie case against accused established - Whether accused able to raise reasonable doubt - Accused' version of events - Whether mere concoction

c

EVIDENCE: Circumstantial evidence - Inference from facts - Whether evidence pointed to guilt of accused beyond reasonable doubt - Whether prima facie case against accused established - Whether accused able to raise reasonable doubt - Accused' version of events - Whether mere concoction

d

EVIDENCE: Documentary evidence - Computer printout - Bus ticket - whether certificate pursuant to s. 90A(2), Evidence Act 1950 necessary for ticket to be admissible as evidence

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The accused, a bus driver, was charged for the crimes of murder and rape of the victim, one Noor Suzaily. The victim had allegedly boarded the bus driven by the accused on the day the alleged incident took place. One of the crucial pieces of evidence adduced was a bus ticket found in the deceased's bag. The information on the ticket showed that it was issued by the accused from the ticketing machine on board the bus driven by the accused on the day in question. The defence objected to the admissibility of this ticket on the ground that since the ticket was produced by a computer (the bus's ticket machine'), therefore it was not admissible unless it was proved by the tendering of a certificate pursuant to s. 90A(2) of the Evidence Act 1950 ('Act'). The accused, further, denied the allegations and claimed that he had given a friend a ride on the bus during the alleged incident.

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a Held:

b [1] Based on the overwhelming circumstantial evidence, the prosecution had succeeded in proving that the person who raped and murdered Noor Suzaily was the accused. The evidence of the DNA tests showed that the semen of the accused was found in the vagina of the deceased. Furthermore, taking into account all the evidences of eye witnesses, the prosecution had succeeded in establishing a *prima facie* case. The accused' story was a mere fabrication in view of the fact that the story was incomplete. Thus, the accused had failed to raise a reasonable doubt. The prosecution, on the other hand, had succeeded in proving their case beyond a reasonable doubt. (pp 462 d-g, 475 d & 476 d-e, g)

d [2] The ticket machine installed on the bus to produce tickets was a computer for the purpose of s. 90A of the Act. However, a certificate pursuant to sub.s. (2) of s. 90A was not necessary in order for the ticket to be admissible as evidence. The invoking of sub.s. (2) of s. 90A is not mandatory but only an option open to the prosecution. Therefore, the ticket as well as the information printed on it was admissible as evidence. (pp 471 f-g, 472 c, f-h & 473 a-b)

e [Accused found guilty of murder and rape.]

Case(s) referred to:

Gnanasegaran Pararajasingam v. PP [1997] 4 CLJ 6 CA (**foll**)
PP v. Ong Cheng Heong [1998] 4 CLJ 209 HC (**refd**)

Legislation referred to:

f Evidence Act 1950, ss. 3, 90A(1), (2), (6)
Penal Code, ss. 277, 302

For the accused - Shenton Maniam (Sreekant Pillai); M/s Sreekant Pillai
For the prosecution - Mohd Hanafiah Zakaria DPP

g Reported by Raja Vishnu Sivarajah

JUDGMENT**Mohd Hishamudin Yunus J:**

h The accused in the present case, Hanafi bin Mat Hassan, was charged for the crimes of murder and rape. The charges read:

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First charge*a*

Bahawa kamu, pada 7 Oktober 2000, antara jam lebih kurang 8.50 pagi, di Lorong Pegaga, Taman Chi Liung, Klang dan jam lebih kurang 9.15 pagi, di sebatang jalan dalam kawasan pembinaan perumahan Taman Bukit Tinggi, Klang, di dalam Daerah Klang, Dalam Negeri Selangor Darul Ehsan telah melakukan bunuh dengan menyebabkan kematian Noor Suzaily binti Mukhtar, Nombor Kad Pengenalan 760609-09-5188; dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan (Akta 574).

*b***Second charge***c*

Bahawa kamu, pada 7 Oktober 2000, antara jam lebih kurang 8.50 pagi, di Lorong Pegaga, Taman Chi Liung, Klang dan jam lebih kurang 9.15 pagi, di sebatang jalan dalam kawasan pembinaan perumahan Taman Bukit Tinggi, Klang, di dalam Daerah Klang, Dalam Negeri Selangor Darul Ehsan telah melakukan rogol ke atas Noor Suzaily binti Mukhtar, Nombor Kad Pengenalan 760609-09-5188; dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 376 Kanun Keseksaan (Akta 574)

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The accused claimed trial.

The trial was scheduled to begin on 2 January 2001, but due to some problem relating to the appointment of counsel, the trial proper only commenced on 12 March 2001.

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The prosecution called 54 witnesses. For the defence, only the accused gave evidence: he did not call any witnesses. The trial took 64 days to complete (but the 64 days did not proceed in one stretch: there were several breaks in between, to accommodate the hearing and trial of other cases).

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On Friday 26 April 2002, when I gave my decision at the conclusion of the trial, I only delivered a brief judgment. I had, however, informed the court that a full written judgment would be issued in due course.

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The following is my full written judgment.

From the evidence of the pathologist, Dr. Halim bin Mansar (PW23), who carried out a post mortem on the body of the deceased, Noor Suzaily, it is clear that she was raped and murdered. Dr. Halim found a fresh tear on the hymen of the victim. Based on Dr. Halim's evidence regarding the injuries suffered by the Noor Suzaily, it is clear that penetration occurred without her consent.

*h**i*

- a* On the murder charge, Dr. Halim, after describing to the court in detail the injuries suffered by the deceased, at the conclusion of his evidence, gave his expert finding as follows:

Death came as a result of ligature strangulation and blunt trauma to the head.

- b* Based on the evidence of Dr. Halim, I was satisfied that the injuries inflicted on Noor Suzaily had caused her death, and that the person who had caused the injuries did so with the intention of causing her death.

The question thus arose: who had brutally raped and murdered Noor Suzaily on 7 October 2000?

- c* The prosecution alleged that the person who raped and murdered Noor Suzaily was the accused. But the accused denied the allegation.

- d* It is the duty of this court to determine, based on the whole evidence adduced by both sides (prosecution and defence) and the law, whether the accused was guilty or otherwise of the two charges that I have set out at the beginning of this judgment.

- e* Having considered the whole evidence and the submissions of the prosecution and the defence, I was satisfied that the prosecution had succeeded in proving beyond reasonable doubt that the person who had raped and murdered Noor Suzaily on the morning of 7 October 2000 was the accused.

My findings were based on what I considered to be overwhelming circumstantial evidence. They are as follows.

- f* **(1) Evidence Of DNA Test**

- g* According to the evidence of the forensic expert from the Department of Chemistry, Encik Primulapathi (PW11), he carried out a DNA test on a blood sample (P21A) from the accused and on the vaginal swabs (P29 and P29B; P30A and P30B) of the victim. The result of the DNA test showed that the semen of the accused was found in the vagina of the deceased (ie, the victim). Of all the evidence tendered by the prosecution against the accused, I think this is the most incriminating.

(2) Evidence Of Room Mate

- h* Cik Rosmaliza binti Umar (PW7) was the room mate of Noor Suzaily at the PKNS flat in Kampong Baru, Kuala Lumpur, where they lived. According to her evidence, on 7 October 2000, at around 7 in the morning, Noor Suzaili left the flat to go to work.

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(3) Evidence Of Office Colleague

Encik Ganeshi a/l Subramaniam (PW31) was a medical laboratory technologist at the Klang branch of the Pantai Medical Centre where Noor Suzaily worked. He gave evidence that the deceased was sent to the Klang office from the head office at Jalan Bukit Pantai, Kuala Lumpur, to train the staff at the Klang office on the use of computers. He testified that Noor Suzaily came to work on 6 October 2000 and that that was the last time that he saw the deceased. He said that the deceased told him that she would be coming to work on the next day, that is, Saturday 7 October 2000, but the deceased did not turn up.

(4) Evidence Of School Pupil, Devan

The evidence of this important eye witness, Devan (PW5), a school pupil, was that on the morning of 7 October 2000, around 8.45am, he saw a bus bearing registration number WDE 4256 and the name “KIARA” stationary at Jalan Pegaga, in Taman Chi Liung. At that time, PW5 was riding a bicycle and was on his way to attend tuition class. He saw through the glass panel of the passenger door of the bus that there was a woman in the bus. The woman without any dress on the upper part of her body, her hair was disarray, and appeared to be frantic. She was knocking on the door of the bus from the inside in a manner as if she was crying for help. Then he saw the bus moving away, leaving Jalan Pegaga and heading for Jalan Sambau. At Jalan Sambau the bus stopped. Devan, on his bicycle, together with another person, on a motorcycle, chased the bus right until Jalan Sambau.

At Jalan Sambau, Devan, the motorcyclist, and together with two other men approached the bus. When he came close to the bus, Devan saw through the glass panel of the passenger door the bus driver walking towards the driver’s seat; and while walking, he was pulling up his trousers. When the bus driver realised the presence of Devan and the other three men, he drove his bus away from Jalan Sambau.

(5) Evidence Of Vehicle Examiner, PUSPAKOM

Encik Ahmad Ali bin Sidek (PW36), a vehicle examiner at PUSPAKOM, testified that on 14 October 2000, at the request of the police, he had examined bus WDE 4256. He found that the bus had only three doors, namely, the driver’s door, the passenger door and the emergency door. The driver’s door was located at the front of the bus to the right of the driver’s seat. The passenger door was located at the front, on the left hand side of the bus. The emergency door was located at the rear, on the right-hand side of the bus. The driver’s door and the emergency door were manually operated. The passenger door was hydraulically powered and of the automatic folding type and could be opened or closed only by the driver of the bus. The ‘open’/‘closed’ button

a for the door was located near the driver's seat. The passenger door could not be independently opened or closed by the passengers. The witness discovered that the emergency door was locked and could not be opened either from inside or outside the bus.

b **(6) Evidence Of The Workers At The Site Of The Housing Project At Bukit Tinggi**

Three Indonesian workers at the site of the housing project at Bukit Tinggi, namely:

- c* (7) Encik Habsa (PW8);
(8) Encik Frederikus (PW9); and
(9) Encik Marselinus (PW10),

d stated in evidence that on 7 October 2000, at about 9 in the morning, they saw the accused driving a bus into the area of the project. They saw the bus stopped for about 30 minutes. The accused was seen behaving suspiciously. According to PW9 and PW10 they did speak to the accused, and accused appeared to be agitated and evasive when asked regarding his presence at the site. The following evidence of PW9 gives a clear picture of the behaviour, conduct and the state of mind of the accused when he was approached and questioned by PW9 and PW10:

e Pada tanggal 7-10-2000, jam lebih kurang 9.00 pagi, semasa saya mahu pergi berkerja saya nampak sebuah bas masuk dan berhenti di tepi jalan. Saya kira bas masuk untuk buat operasi. Dia berhenti begitu lama lebih kurang setengah jam. Dan saya ajak sama kawan saya Marsel dan saya bertanya kepada Marsel:

f Basnya berhenti begitu lama.

g Tak lama kemudian, pintu bas terbuka seperti membuang pakaian perempuan dari pintu keluar-masuknya penumpang. Setelah itu, pintunya ditutup dan bas itu berjalan terus. Selepas itu saya ajak kawan saya Marsel pergi ke tempat pembuangan pakaian, setelah sampai di sana pakaian itu adalah milik pakaian perempuan. Setelah itu, kami mendekati bas itu, bas sudah pusing mahu masuk jalur (laluhan) sebelahnya. Setelah itu dia berhenti di loji. Kami dekati terus bas itu. Nampak kami hampir dekat, si drebar turun dari pintu keluarnya penumpang. Saya nampak seperti mahu kencing. (Witness requests that he be allowed to stand.) Setelah saya mendekati bas, dia berdiri seolah seperti menarik zip seluarnya. (Witness demonstrates.) Setelah saya hampir mendekati bas, dia naik semula bas melalui tempat turun naiknya penumpang. Setelah itu dia duduk di tempatnya drebar. Selepas itu saya bercakap sama itu drebar. Saya tanya itu drebar:

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Apasal engkau dekat sini?

a

Lalu dia jawab:

Aku nak relaxlah.

Selepas itu saya tanya lagi:

b

Mana boleh engkau relax tempat kontrak ini macam, lebih elok engkau relax dekat luarlah.

Selepas itu si drebar menanyakan saya:

Apasal engkau tak kerja?

c

Saya menjawab:

Saya kerja. Masuk pukul 10, sebab paginya hujan gerimis.

Selepas itu, dia bising dengan kawan saya Marsel:

d

Pergilah! Pergilah!

Macam itu, lalu saya menjawab:

Buat apa engkau suruh saya pergi?

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Semasa saya bertanya si drebar, raut wajahnya berubah seperti mukanya pucat. Selepas itu, dia jalankan bas, agak-agak 200 meter dia berhenti lagi. Dia tengok lagi belakang seperti kami mahu ikut lagi arah bas itu. Pada saat itu, kami mengikuti bas dengan berjalan kaki. Setelah sampai di simpang empat, nampak bas sudah keluar ke lampu trafik light.

Frederikus and Marselinus saw some objects being thrown out of the bus. The objects were found to be woman's clothing, namely, a long skirt (P11A), a long sleeve T-shirt (P12A), a bra (P13A) and a panty (P14A). Puan Harison (PW12), the mother of the victim, identified two of these objects as clothing belonging to her late daughter, the deceased, namely, a long skirt (P11A) and a long sleeve T-shirt (P12A). On the morning in question, there was no reason for the accused to stop his bus at the site of the project. The site of the project was outside the route assigned to his bus. Moreover, the roads at the site were still under construction.

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(7) Evidence Of Officers Of The Developer Working At The Site Of The Project

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On 7 October 2000, at about 3 in the afternoon, two gentlemen, Encik Radzlin bin Thani (PW2), an engineer employed at the site of the Bukit Tinggi project together with Encik Mohamad Ali bin Malek (PW3), a supervisor of the project,

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- a* came across the body of the deceased at the site of the project, lying naked by the side of a road which was then still under construction. The place where the body was found was not far from the place where the accused had stopped his bus earlier in the morning and also not far from the place where the clothing of Noor Suzaily was found. PW2 phoned the police. Soon after, a police patrol car came to the scene.
- b*

(8) Evidence Of Arresting Officer, Det. Corporal Sukdarshan Singh

- Det. Corporal Sukdarshan Singh (PW45) was the police officer who arrested the accused on 10 October, 2000, at about 2.45 in the afternoon at Port Klang. At the time of arrest, accused was seated in his bus bearing registration number WDE 4256, and the name "Kiara Express". The accused after the arrest was taken to the IPD (police headquarters) Klang. While conducting a body search on the accused at the IPD Klang, Cpl. Sukdarshan found a Motorola Star Tac hand-phone (P39) on the accused. There is evidence that the Star Tac hand-phone belonged to the deceased. The hand-phone operated on the Celcom (019) system. He also found on the accused a cash sale receipt (P71) dated 7 October 2000 and written on the receipt "1 Sim Pack, 1 travel charger".
- c*
- d*

(9) Evidence Of Fiancé, Rudy Shahrin Regarding The Hand-Phone

- The deceased's fiancé (PW14) was called to testify on behalf of the prosecution. He testified that he and Noor Suzaily studied together for a foundation course at the Twin Tect Institute of Technology, Old Klang Road, Kuala Lumpur. Later both of them proceeded to the United Kingdom to pursue their degree. While studying at the United Kingdom, Rudy bought for Noor Suzaily a Star Tac hand-phone. Rudy identified the Star Tac hand-phone (P39) which Det. Cpl. Sukdarshan Singh seized from the accused as the hand-phone which he had bought for Noor Suzaily.
- e*
- f*

(10) Evidence Of Chief Inspector Raduan bin Mohamed

- Chief Insp. Raduan (PW33) in his evidence said that on the night of 10 October 2000, at about 8.30pm, in the course of police investigation, the accused led and showed him and several other police officers a place near a road divider in front of the building of the Majlis Perbandaran Kelang where the accused had thrown away several documents. PW33 found the documents lying in a drain. The documents were a Bank Muamalat saving account book (P47), a Citibank Mastercard (P46), a Wadiah Maybank saving account book (P48), and the identity card (P46) of the deceased. Evidence (which remained unchallenged) were adduced through PW18 (bank officer from Citibank), PW19 (bank officer bank officer from Bank Muamalat), PW20 (bank officer from Maybank) and PW34 (officer from National Registration Department) to prove that these documents belonged to the deceased.
- g*
- h*

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(11) Evidence Of Investigating Officer, Chief Insp. Shaimah

Chief Insp. Shaimah (PW54), the Investigating Officer of the case, testified that on the night of 10 October 2000, while at the house of the accused for the purpose of investigation, she saw and seized a pendant (P36) belonging to the deceased (Noor Suzaily's pendant was identified by her mother, Puan Harison). She discovered the pendant in a powder bottle placed behind the door of a bedroom.

(12) Evidence Of Employees Of Bus Companies

There were two bus companies, namely, Permata Kiara Sdn. Bhd. and Ardent Link Sdn. Bhd., that operated to and fro bus services from Port Klang to Kuala Lumpur *via* Klang. They shared a common workshop and office premise at Bukit Raja, Klang. These two companies also shared the same employees, including bus drivers, to operate their respective bus services.

The evidence of the employees of these two bus companies, namely:

- (a) Encik Lim Ah Bah (PW25), an operation supervisor;
- (b) Encik Chang Khin Aun (PW26), an operation assistant;
- (c) Encik Pong Yin Fong (PW27), an operation supervisor;
- (d) Encik Chin Teck Hua (PW37), a mechanic; and
- (e) Cik Lim Yee Lian (PW38), a clerk;

confirmed that the accused at the material time was one of the drivers of Permata Kiara Sdn Bhd., and that in the morning of 7 October 2000, he was the driver of a bus of the company bearing number WDE 4256. On that day, the accused was assigned the duty of driving the bus for the route from Port Klang to (*via* Klang) Kuala Lumpur and back.

Lim Ah Bah (PW25) also confirmed that the Taman Chi Liung and Bukit Tinggi areas did not come within the designated route of the accused.

Chang Khin Aun (PW26) prepared the duty roster of the bus drivers for 7 October 2000. According to the duty roster (P56) prepared by him for 7 October 2000, the accused was supposed to start work at 6.40am and to drive the bus allotted ie, WDE 4256 for the designated route ie, from Port Klang to Kuala Lumpur and back to Port Klang.

a (13) Evidence Of The Finding Of A Black Bag Brand “GUESS”

Encik Shahim bin Mahsen (PW15), a postman with Pos Malaysia and attached to the Bukit Raja office, testified that on the morning of 7 October 2000, while passing along Lebuhr Keluli on the way to work at Bukit Raja, he saw a black bag (P38A) lying by the side of the road. Subsequently, and as a result of inquiries made by him based on a phone number found written on a Citibank slip (P81) found in the bag, he handed over the bag to the fiancée of the deceased, Encik Rudy Shahrin (PW14). According to Shahim and the sketch plan (P10) tendered by the investigating officer (PW54), the road known as Lebuhr Keluli was situated close to the bus workshop of Permata Kiara and it is this particular road that was normally used by the buses of Permata Kiara when returning to the workshop.

d (14) Evidence Of Rudy Shahrin And Puan Hammidah On The Black Bag
Rudy Shahrin (PW14), the fiancée of Noor Suzaily, gave evidence that he found in the black GUESS bag (P38A) a piece of bank slip – a Citibank bank slip (P81) – and on the bank slip was a handwritten phone number which he identified as the house phone number of the deceased. He identified the handwriting of the phone number as that of his late fiancée, Noor Suzaily. Rudy also found in the bag a make-up set (P38C) and several bus tickets (P38D(1), P38D(2) and P38E).

e Puan Hammidah bt. Shaari (PW22), the General Manager of Pantai Medical Centre, Kuala Lumpur, testified that Noor Suzaily was an officer of the Pantai Medical Centre and was assigned to set up a Laboratory Information Centre at the Klang office of the Pantai Medical Centre. Among the items found in the bag (P38A) was a file (P38B). She recognised the information contained in the file as pertaining to the work that was being carried out by the deceased on the Laboratory Information Centre at the Klang office.

From the evidence of Shahim, Rudy and Hammidah, I was satisfied that the black bag (P38A) belonged to the deceased Noor Suzaily.

g What is important is that Rudy found in the bag a bus ticket (P38D(2)) dated 7 October 2000. This was a crucial piece of evidence.

(15) Evidence Pertaining To Bus Ticket

h According to the evidence of Lim Ah Bah (PW25) and another witness, Ng Peng Ho (P35), who was a cashier with Permata Kiara, based on the information printed on the bus ticket (P38D(2)) and on a document known as the “TLO report” (P58), the ticket (P38D(2)) was issued from the ticket machine of bus WDE 4256 at 8am on 7 October 2000. The ticket was for a journey from Kuala Lumpur to Port Klang. And the driver who issued the ticket was one Hanafi bin Mat Hassan, the accused.

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PW25, in his evidence, explained to the court the daily duties of a driver. Every driver of a Permata Kiara bus would be given a driver key and a four digit code number for the ticket machine installed on each of the buses. As for the accused he was given a driver key (P53) and the code number “6095”. The ticket machine was located at the front area of the bus near the driver’s seat. A driver commenced his daily work by using the driver key to switch on the ticket machine. Having done that, the driver would then have to key in into the ticket machine his code number. Every driver at the commencement of his daily work is required to produce from the ticket machine a report known as the “status report”. And at the end of the day when he had completed his shift, he had to produce from the ticket machine another document known as the “shift report”. The status report and the shift report would have to be submitted to a clerk at the office of the workshop by the driver together with another document known as the waybill for the purpose of claiming his wage. In the present case, the status report, shift report and waybill produced and submitted by the accused for work done on 7 October 2000 was P50, P51 and P52. They were placed by the accused on the table of the clerk of Ardent Link, Cik Lim Yee Lian (PW38).

According to PW25, the ticket machine also produced tickets for passengers boarding the bus. When a passenger boarded the bus, he would pay the fare to the bus driver. The latter would then, by pressing the appropriate buttons on the ticket machine to denote the amount of the fare paid, cause the ticket machine to produce a ticket for that passenger. The driver would then give the ticket to the passenger concerned. Each ticket issued carried a serial number. PW25 identified P38D(2) as one of those tickets normally issued by a ticket machine installed on the buses of his company.

In respect of ticket P38D(2), PW25 explained what the information printed on the ticket meant. The figure “010956” printed on the ticket denotes the serial number of the ticket. The figures “07/10/00” and “08:00” on the ticket are, respectively, the date and time the ticket was issued, meaning the ticket was issued to the passenger on 7 October 2000 at 8am. The word “RM2” was the fare paid by the passenger for the ticket. The letter “D” printed on the ticket denotes that the fare paid was for an adult passenger. The letter “T” printed on the ticket denotes the trip intended to be taken by the holder of the ticket ie, from Kuala Lumpur to Port Klang. The word “P. Kiara” denotes the bus service provided by his company, Permata Kiara. The word “K. Lumpur” shows the station where the passenger (to whom the ticket was issued) boarded the bus. The word “R008” shows the route assigned to the bus in question ie, from Port Klang to Kuala Lumpur and back.

- a* It will be observed that the ticket by itself does not show that it was issued by the accused; nor does it show that the ticket was issued from bus WDE 4256.
- b* Prosecution witness Encik Ng Ho Peng (PW35) who was employed as a cashier by Permata Kiara at the material time testified that among his duties as a cashier was to collect from the cash box (located near the driver's seat) of every bus of the company the daily collection from the sales of bus tickets. This was done in the evenings after the buses had finished their trips. He had to use a special key to open the boxes. The cash collected from each bus is put in a special bag, one bag for each bus. When collecting the cash from a bus, he would also have to produce (by using a driver's key and a special code number) from the ticket machine of the bus a report known as the "TLO report". According to PW35, "TLO" stands for "Ticket Liaison Officer". The TLO report also would have to be put in the respective bag together with the cash. The TLO report (P58) produced from bus WDE 4256 was produced by
- c* PW35 from the ticket machine on WDE 4256. It was produced on 7 October at 7.30pm. According to the evidence of PW35, the information contained in the TLO report (P58) shows the connection between TLO report and the ticket P38D(2). Among the information contained in TLO report are:
- d*
- e* (a) the date when the TLO report was produced by PW35, ie, 7 October 2000;
 - (b) the time when the TLO report was produced ie, 7.30pm.;
 - (c) the code assigned to the driver of the bus on 7 October 2000, namely, 6095;
- f*
- (d) the time the driver of the bus keyed in his code number, that is, at 7.51am;
 - (e) the number of the ticket machine being used, that is, 97450286;
 - (f) the registration number of the bus in question, namely, WDE 4256;
- g*
- (g) the serial numbers of the tickets issued by the bus on 7 October 2000, namely, 10956 and 10957 (meaning that there were only two tickets issued for that particular trip);
 - (h) the route code number ie, 008, referring to the Kuala Lumpur-Port Klang-Kuala Lumpur route;
- h*
- (i) that, for the particular trip, the bus started from Kuala Lumpur.
- i*

The information on the TLO report, when read together with the information on the ticket P38D(2), shows that this particular ticket was issued by the accused on board bus WDE 4256 on 7 October 2000 at 8am at Kuala Lumpur. PW35 explained that the TLO report also showed the number of tickets issued by the accused for the trip from Kuala Lumpur to Port Klang on the morning of 7 October 2000. In the present case the TLO report showed that only two tickets were issued by bus WDE 4256 in respect of the particular morning trip from Kuala Lumpur to Port Klang on 7 October 2000 ie, ticket bearing numbers 10956 (ie, P38D(2)) and 10957.

PW35 testified that on 7 October 2000, apart from producing a TLO report from the ticket machine on bus WDE 4256, he also produced from the same machine another report known as the audit report (PW69). This audit report was related to the TLO report.

Encik Sreekant Pillai, the learned defence counsel, objected to the admissibility of P38D(2) on the grounds that since the ticket P38D(2) was produced by a computer, therefore it was not admissible unless it was proved by the tendering of a certificate pursuant to s. 90A(2) of the Evidence Act 1950 which reads:

(2) For the purposes of this section it may be proved that a document was produced by a computer in the course of its ordinary use by tendering to the court a certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used.

The learned counsel cited *Public Prosecutor v. Ong Cheng Heong* [1998] 6 MLJ 678. Encik Sreekant submitted that, by reason of the definition of “computer”, the ticket machines on the Permata Kiara buses were computers.

Encik Mohd Hanafiah bin Zakaria, the learned Deputy Public Prosecutor, agreed that the ticket machine installed on each of the Permata Kiara buses was a computer for the purpose of s. 90A, but disagreed that a certificate pursuant to sub-s. (2) of s. 90A was necessary in order for the ticket to be admissible. The learned DPP argued that invoking or relying on sub-s. (2) of s. 90A was not mandatory but only an option opened to the prosecution. The learned DPP contended that in order to tender P38D(2) as evidence it was sufficient for him to rely on s. 90A(1) read with the definition of “computer” as found in s. 3 of the Evidence Act 1950. Subsection (1) of s. 90A reads:

- a** (1) In any criminal or civil proceeding a document produced by a computer, or a statement contained in such document, shall be admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement.
- b** Section 3 of the Evidence Act 1950 defines “computer” as follows:
- “computer” means any device for recording, storing, processing, retrieving or producing any information or other matter or for performing any one or more of those functions by whatever name or description such device is called; ... (not relevant) ...
- c** The learned DPP submitted that the evidence of PW25 showed that the ticket P38D(2) was produced by the ticket machine in the ordinary course of its business. In my opinion, even without such evidence, sub-s. (6) of s. 90A of the Evidence Act 1950 deems the ticket to be produced by the ticket machine in the course of its ordinary use. Subsection (6) provides:
- d** (6) A document produced by a computer, or a statement contained in such document, shall be admissible in evidence whether or not it was produced by the computer after the commencement of the criminal or civil proceeding or after the commencement of any investigation or inquiry in relation to the criminal or civil proceeding or such investigation or inquiry, and any document
- e** so produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.
- I agree with the submission of the learned DPP. The decision of the Court of Appeal in *Gnanasegaran Pararajasingam v. Public Prosecutor* [1997] 4 CLJ 6 supports his view. Shaik Daud Ismail JCA delivering the decision of the Court of Appeal ruled:
- f**
- As stated earlier, s. 90A was added to the Evidence Act 1950 in 1993 in order to provide for admission of computer produced documents and statements as in this case. On our reading of this section, we find that under sub-s. (1)
- g** the law allows the production of such computer generated documents or statements if there is evidence that they were produced firstly by a computer. Secondly, it is necessary also to prove that the computer is in the course of its ordinary use. In our view, there are two ways of proving this. One way is, it “may” be proved by the production of the certificate as required by sub-s. (2). Thus sub-s. (2) is permissive and not mandatory. This can also be seen
- h** in sub-s. (4) which begins with the words ‘Where a certificate is given under sub-s. (2)...’. These words show that a certificate is not required to be produced in every case. It is our view that once the prosecution adduces
- i**

evidence through a bank officer that the document is produced by a computer it is not incumbent upon them to also produce a certificate under sub-s. (2) as sub-s. (6) provides that a document produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.

a

I was satisfied that the ticket machines installed on the buses were computers. There was the evidence of PW25 and PW35 to the effect that the ticket machines recorded and stored information and produced tickets, status reports, shift reports, TLO reports and audit reports. Thus they were devices for recording, storing, and producing information (see the definition of “computer”). And I was also satisfied that the ticket P38D(2) was produced by one of those ticket machines. Thus the ticket P38D(2) as well as the information printed on it were admissible as evidence.

*b**c*

(16) Evidence Of Cik Leow Get Chu

Cik Leow Get Chu (PW40) and her husband ran a shop known as “M.S. Telecommunications System” at Klang. They sold hand-phones, hand-phones’ accessories and sim cards, including Celcom (019) prepaid sim cards. She recognised the cash sale receipt P71 as having been issued by her on 7 October 2000 for the purchase of a Celcom (019) prepaid sim card and a travel charger. The phone number allotted to the prepaid card was 019-343660. The purchaser paid RM203 in cash for these two items.

*d**e*

From the above evidence, I made the following inferences and findings of facts.

(1) On 7 October 2002, at about 7.30 in the morning, Noor Suzaily left her PKNS flat in Kampong Baru, Kuala Lumpur, to go to her place of work at Klang.

f

(2) With the intention of going to her place of work at the Pantai Medical Centre, Klang, Noor Suzaily, at 8am (on the same day) boarded the Permata Kiara bus WDE 4256 at the Klang Bus Stand, Kuala Lumpur. The accused was the driver of the bus. Upon boarding the bus, the accused issued her a ticket bearing serial number 10956 (P38D(2)). The ticket was produced from a ticket machine number 97450286 installed on the bus.

g

(3) In the morning of that fateful day, the accused drove his bus from the Klang Bus Stand, Kuala Lumpur, to Klang. At Klang, the accused, with the intention of committing the heinous crimes that he is now charged with, drove the bus to Jalan Pegaga at Taman Chi Liung and stopped there – where he was spotted by Devan (PW5); then he drove the bus to Jalan Sambau and stopped; and then he drove his bus to site of the Bukit Tinggi project and, again stopped – where he was spotted by PW8, PW9 and PW10. Throughout,

*h**i*

a his victim, Noor Suzaily, was in the bus. While the bus was at Jalan Pegaga, Jalan Sambau and at Bukit Tinggi, something horrendous happened to Noor Suzaily in the bus: she was brutally raped and murdered.

b (3) The driver of the “Kiara” bus that was seen by Devan (PW5) at Jalan Pegaga and Jalan Sambau in the morning of 7 October 2000 was in fact the accused. And I have no doubt whatsoever that the woman that Devan (PW5) saw in the bus that morning at Jalan Pegaga, who appeared to be frantic and was banging her hands on the glass panel of passenger door of the bus, was the deceased, Noor Suzaily. That morning, from inside the bus, she was desperately crying for help. She could not open the passenger door because
c only the driver, that is the accused, could open it; neither could she open the emergency door, because it was locked.

d (4) I am convinced beyond reasonable doubt that the accused mercilessly and brutally raped and murdered the deceased, Noor Suzaily, in the bus WDE 4256 driven by him in the morning of 7 October 2000 at the time and placed as stated in the charges, that is to say, between around 8.50am at Jalan Pegaga in Taman Chi Liung, Klang, and 9.15 in the morning at the site of the project at Bukit Tinggi, Klang. The accused murdered Noor Suzaily by strangling her neck with a piece of cloth and by forcefully hitting her head with, or banging her head to, a hard object.
e

(5) After having raped and murdered his victim, the accused threw out the deceased’s clothing from the bus while the bus was stationary at a construction site at Bandar Bukit Tinggi.

f (6) Having thrown out the clothing, the accused moved his bus some distance away from the spot where earlier he had thrown the deceased’s clothing, so as to be out of sight of PW9 and PW10 and of anyone else, and with the intention of disposing off the body of his victim. He then, at a “safe” place in the vicinity of the project site, removed the deceased’s body from the bus and left it at the spot where the body was subsequently, in the afternoon of the same day
g (7 October 2000), discovered by witnesses Radzlin (PW2) and Mohamad Ali (PW3).

h (7) Having murdered Noor Suzaily, the accused took from his victim her Motorola Star Tac hand phone (P39) and her pendant (P36). On the same day, the accused bought a travel charger and a Celcom 019 prepaid sim card from PW40’s (Cik Leow’s) shop in Klang. The accused took the pendant to his house, put it inside a powder bottle and hid the bottle behind a door.

i

(8) Having disposed off the body of Noor Suzaily at the project site, the accused drove off heading for his base at the Permata Kiara bus workshop at Bukit Raja. On his way to the Permata Kiara bus workshop, while passing along the dual carriage way road (Jalan Jambatan Kota) in front of the Majlis Perbandaran Klang, the accused threw out from his bus and into a drain near a road divider important personal documents belonging to Noor Suzaily, namely, a Bank Muamalat saving account book (P47), a Citibank Mastercard (P46), a Wadiah Maybank saving account book (P48), and the identity card (P46) of the deceased.

(9) While still on his way to the Permata Kiara workshop and while passing Lebuhraya Keluli, a dual carriage way in Bukit Raja situated near the office of Pos Malaysia, the accused threw out of the bus that he was driving, the bag (P38A) which Noor Suzaily was carrying with her when she boarded the bus at the Klang Bus Stand, Kuala Lumpur.

At the close of the case for the prosecution, after hearing submissions, I was satisfied that the prosecution had succeeded in establishing a *prima facie* case.

The three elections were explained to the accused. He elected to give evidence on oath.

The accused in his evidence did not deny that on the morning of 7 October 2000 he was the driver of the bus, WDE 4256. The accused also did not deny that that morning he was driving the bus from the Klang Bus Stand at Kuala Lumpur to Port Klang. According to the accused, that morning there were only two passengers, that is, a woman friend of his by the name of Sikin and another Malay woman. It was the evidence of the accused that the Malay woman got down in a hurried manner at a bus stand in front of a "Medical Centre" in Klang. When asked by the learned Deputy Public Prosecutor whether this Malay woman was the deceased, Noor Suzaily, the accused replied:

Tidak perasan.

The accused denied raping and murdering Nor Suzaily. According to him, on the day in question, Sikin boarded the bus at the Klang Bus Stand, Kuala Lumpur. On arriving at Klang he invited Sikin for a drink at a restaurant at Taman Chi Liung but as there was no place at the restaurant to park his bus he, instead, took Sikin to Jalan Sambau and there they had a 'chit-chat' in the bus. The accused said in evidence that while on the way to the restaurant, at Jalan Pegaga, his bus almost knocked down PW5 (Devan) who at that time was riding a bicycle.

- a* The accused alleged that while he was ‘chit-chatting’ with Sikin on the bus at Jalan Sambau, he saw four men heading towards his bus carrying sticks and iron rods, forcing him to drive away from there so as to save himself and Sikin.
- b* From Jalan Sambau he took Sikin to the site of the project at Bukit Tinggi and stopped his bus there. He got down from his bus to urinate. While urinating, he was approached by Frederikus and Marselinus and he had a conversation with them. While he was conversing, Sikin who was on the bus called him to inform that she found a hand-phone on the bus.
- c* I was of the view that the accused story was a mere concoction and the so-called Sikin did not exist but was merely a figment of his imagination. If Sikin did really exist, then, that would be a material factor for the defence; and the existence of Sikin surely would have been told by the accused to his counsel, and his counsel would certainly have asked Chief Inspector Shaimah, Frederikus and Marselinus, when cross-examining them, about Sikin.
- d* Another reason why I was of the opinion that the story about Sikin was a mere fabrication was that the story about Sikin as told to the court by the accused was rather incomplete. The accused failed to tell the court as to what subsequently happened to Sikin after she was said to have found a hand-phone on the bus. Did the accused send her home? Or did the accused leave her at the project site at Bukit Tinggi? Or, did the accused take her along with him to the workshop? Or, did the accused drop her at some place in Klang? The accused just left the story hanging.
- e*
- f* The story that the bus, which the accused drove, almost knocked down Devan at Jalan Pegaga was also difficult to believe. For, if the story was indeed true, this matter too would have been raised by his counsel when cross-examining Devan.
- g* Furthermore, the accused failed to explain how his semen was found in the vagina of the deceased; or how the pendant belonging to Noor Suzaily happened to be kept in a powder bottle in his house.
- On the whole, the accused failed to raise a reasonable doubt. On the contrary, I was satisfied that the prosecution had succeeded in proving their case beyond reasonable doubt.
- h*
- Accordingly, I found the accused guilty of both the charges and, accordingly, I convicted him of the same.
- i*

As to the sentence, for the capital offence, I sentenced the accused to death in accordance with the provision of s. 302 of the Penal Code and s. 277 of the Criminal Procedure Code. For the offence of rape, taking into account that it was very serious offence, that the accused had a previous conviction of voluntarily causing hurt in committing robbery under s. 394 of the Penal Code in 1997, and that in the present case he was merciless and very brutal to his victim, I sentenced him to twenty years imprisonment and twelve strokes whipping.

*a**b**c**d**e**f**g**h**i*